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OFFICE OF PETITIONS

In re Application of :
Luciano et al. : DECISION ON PETITION
Application No. 09/419,748 :
Filed: October 16, 1999 :
Atty Docket No. 10407-1031 :

This is a decision on the "PETITION TO WITHDRAW HOLDING OF
ABANDONMENT PURSUANT TO 37 CFR §1.181" filed June 5, 2006.

The above-identified application became abandoned for failure to
reply to the non-final Office action mailed February 13, 2002.
This Office action set a three-month shortened statutory period
for reply, with extensions of time obtainable under § 1.136(a).
No reply considered received and no extension obtained, the
above-identified application became abandoned on May 14, 2002.
A Notice of Abandonment was mailed on May 18, 2006.

In response, applicants filed the instant petition. Petitioner
states that a response to the non-final Office action was timely
filed via facsimile on August 13, 2002 with a three-month
extension of time. The former attorney of record submitted this
response. In support thereof, petitioner submits *inter alia* a
copy of the response as filed with a certificate of facsimile
transmission signed and dated August 13, 2002 and a copy of
their facsimile confirmation showing successful transmission of
14 pages to the referenced USPTO number on August 13. (In
addition, petitioner submits evidence that the response as filed
on August 13, 2002 was resubmitted by the former attorney of
record on August 11, 2004).

37 CFR 1.8(b) provides that:

In the event that correspondence is considered timely filed by being mailed or transmitted in accordance with paragraph (a) of this section, but not received in the U.S. Patent and Trademark Office after a reasonable amount of time has elapsed from the time of mailing or transmitting of the correspondence, or after the application is held to be abandoned, or after the proceeding is dismissed, terminated, or decided with prejudice, the correspondence will be considered timely if the party who forwarded such correspondence:

- (1) Informs the Office of the previous mailing or transmission of the correspondence promptly after becoming aware that the Office has no evidence of receipt of the correspondence;
- (2) Supplies an additional copy of the previously mailed or transmitted correspondence and certificate; and
- (3) Includes a statement which attests on a personal knowledge basis or to the satisfaction of the Director to the previous timely mailing or transmission. If the correspondence was sent by facsimile transmission, a copy of the sending unit's report confirming transmission may be used to support this statement.

On instant petition, petitioner has satisfied the requirements of 1.8(b) to have the response considered timely filed by virtue of its facsimile transmission on August 13, 2002. The record includes no evidence that the Office was unable to charge the required extension of time fee to the Deposit Account as authorized.

Accordingly, the Notice of Abandonment mailed May 18, 2006 is hereby **VACATED**, and the holding of abandonment is hereby **WITHDRAWN**.

The petition under § 1.181 is **GRANTED**.

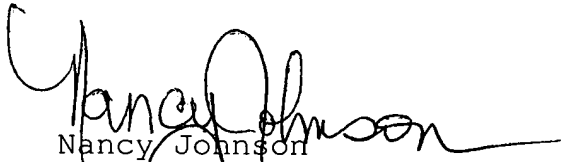
No fee is required for the petition under § 1.181.

A request to charge the required extension of time fee to the Deposit Account pursuant to the authorization originally received August 13, 2002 is being forwarded to the Finance

Department for processing. In the event that, such fee cannot be charged, the required three-month extension of time charge (at the rate in effect on August 13, 2002) will be charged to petitioner's Deposit Account, pursuant to their authorization to charge any required fees. (The fee is required to consider the response timely received and to withdraw the abandonment).

Technology Center AU 3724 has been advised of this decision. The application file is, thereby, forwarded to the Technology Center's technical staff to withdraw the holding of abandonment and for the examiner to consider the response to the non-final Office action resubmitted on petition filed June 5, 2006.

Telephone inquiries specific to this decision should be directed to the undersigned at (571) 272-3219.


Nancy Johnson
Senior Petitions Attorney
Office of Petitions